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Supreme Court of the United States

October Term, 1975

No. 75-6289

INEZ MOORE,
Appellant,

vs.

CITY OF EAST CLEVELAND, OHIO,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF OHIO

BRIEF FOR THE APPELLEE

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INEZ MOORE,
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CITY OF EAST CLEVELAND, OHIO,
Appellee.

On Appeal From the Supreme Court of Ohio

BRIEF FOR THE APPELLEE

QUESTION PRESENTED

Is a homeowner deprived of due process, or equal protection, or fundamental rights when municipal zoning ordinances, properly enacted under the police power of a municipality, define family to consist of one individual where said ordinances provide escape clauses to cover hardship cases and the homeowner fails or refuses to seek relief from any alleged hardship through the provisions embodied in such ordinances?

STATEMENT OF THE CASE

The facts in the present case, as shown by the transcript of the proceedings in the East Cleveland Municipal Court, Case No. 162307 are as follows: Appellant, Inez Moore is the part owner of a two family dwelling structure located at 1354-56 Garfield in the City of East Cleveland. Raiford Williams, the City Deputy Housing Inspector, came before the Clerk of East Cleveland Municipal Court and swore out a complaint that on or about the 30th day of January, 1974, that Inez Moore did unlawfully permit two families to occupy a single family dwelling unit of the structure at 1354-56 Garfield in violation of Section 1351.02 of Ordinance 6010 of the Ordinances of the City of Cleveland (A. 2).

The Appellant was summoned to appear in the East Cleveland Municipal Court and did so appear. A plea of not guilty was entered and a Motion to Dismiss was subsequently filed, heard and denied. The Appellant was found guilty upon stipulation of defense counsel that the said Appellant, John Moore, Sr., her son, John Moore, Jr., John Moore, Sr.'s son, Dale Moore, Sr., her son; and Dale Moore, Jr., the son of Dale Moore, inhabit the single dwelling unit here in question. By stipulating to a plea of guilty to a violation of Section 1351.02, Appellant conceded that the habitation of the dwelling by the above persons was in violation of Section 1351.02, Codified Ordinance 6010 of the Codified Ordinances of the City of East Cleveland (A. 115).

However, at the time of the citation of appellant, John Moore, Sr. was not a resident in the home. Instead, he lived in Cleveland, not East Cleveland, on Central Avenue (See Appendix to this Brief p. 29).

There is no evidence in the record below that Appellant made an administrative appeal of the citation as provided for in Chapter 1311 of the Codified Ordinances of East Cleveland.

SUMMARY OF ARGUMENT

The Supreme Court of Ohio correctly found that there was no substantial constitutional question thereby affirming the decision of the Court of Appeals of Ohio, Eighth District in which the court held that the East Cleveland zoning ordinances, in its definition of family, did not constitute a denial of equal protection or due process or appellant's fundamental rights.

The Supreme Court of Ohio correctly found no substantial constitutional question and the Court of Appeals of Ohio, Eighth District found that the City of East Cleveland has a compelling interest in acting in the best interest of the safety, health, welfare, and morals of its citizens. The means chosen were held to be a proper exercise of the police power by the City of East Cleveland and the procedure was reasonable and not arbitrary.

Further, appellant presented no evidence at the trial below and none is in the record to show that the City acted arbitrarily.

In the instant case, appellant was provided, through the codified ordinances of East Cleveland, with possibly three (3) means to obtain relief. Where appellant failed or refused to act to remedy the situation, there was no violation of any of her constitutional rights.

ARGUMENT

I. THE SUPREME COURT OF OHIO CORRECTLY FOUND THAT THERE WAS NO SUBSTANTIAL CONSTITUTIONAL QUESTION THEREBY AFFIRMING THE COURT OF APPEALS OF OHIO, EIGHTH DISTRICT IN WHICH THAT COURT HELD CONSTITUTIONAL THE EAST CLEVELAND ZONING ORDINANCE'S DEFINITION THAT "A FAMILY MAY CONSIST OF ONE INDIVIDUAL."

The case of *Belle Terre v. Boraas,* ..... U.S. ....., 94 S. Ct. 1536 (1974) involved a zoning ordinance of the Village of Belle Terre which defined the word "family". The definition in essence restricted a family to blood relatives and not more than two unrelated people living together. Six unrelated college students were living together in a house in a single family dwelling district. The owner of the house, Boraas, who was cited for a violation, contested the constitutional validity of the ordinance. Boraas raised numerous objections including the right to privacy and the right to travel. Justice Douglas, who is known as one of the staunch supporters of the absolutist theory concerning First Amendment rights, in writing the opinion of this Court, summarily dispensed with Boraas's arguments. To paraphrase Justice Douglas' statements at page 1540 of 94 S. Ct., there was no procedural disparity occasioned on some but not on others; the ordinance did not involve any fundamental right guaranteed by the Constitution including right to privacy and right of association. As Justice Douglas further stated:

> "We deal with economic and social legislation where legislatures have historically drawn lines which we

> respect against the charge of violation of the Equal Protection Clause if the law be 'reasonable not arbitrary' (quoting *F. S. Royster Guano Co. v. Virginia,* 253 U. S. 412, 415, 40 S. Ct. 560, 561, 64 L. Ed. 989 and bears a rational relationship to a (permissible) state objective. *Reed v. Reed,* 404 U.S. 71, 76, 92 S. Ct. 251, 254, 30 L. Ed. 2d 225."

As to the contention of Appellee Boraas that if two unrelated people could constitute a family within the meaning of the ordinance, three or four should be also included, Justice Douglas stated that every line drawn by a legislature leaves some people out who might have been included; that it is an exercise of discretion left to the legislature not the judiciary. *Belle Terre v. Boraas,* ..... U.S. ....., 94 S. Ct. 1536, 1540 (1974).

Although the *Belle Terre* case dealt with unrelated persons, it is analogous to the present case since the question in both is the constitutional validity of an ordinance defining family. In both cases the legislative authority of the municipality has sought to promote the public welfare limiting the people who can dwell in a single family unit by defining the word family. Although Section 1341.08 of the ordinances of East Cleveland might seem more restrictive than the *Belle Terre* ordinance, it does not limit the traditional family composed of the parents and unmarried children, but even goes beyond that standard. Thus the rationale of the *Belle Terre* case that there is no violation of fundamental rights, that the "rational relationship" test should be applied, and that there is no disparity created by the line drawn by the legislature which will not be interfered with by the judiciary, should also be applicable to this case.

The case of *Palo Alto Tenants Union v. Morgan,* 321 F. Supp. 908 (Fed. Dist. Ct. N.D. Calif. 1970), *affirmed*

487 F.2d 883 (1973) involved the constitutionality of an ordinance defining family as persons related by blood, marriage or legal adoption, or not more than four unrelated persons.

Although that case centered on the provision for four unrelated persons, it is analogous to the present situation in that the constitutionality of a restrictive definition of family by a zoning enactment is involved.

The plaintiffs-tenants in the *Palo Alto* case asserted the arguments of freedom of association and right to family privacy, claiming them to be fundamental rights under the constitution, and therefore only to be infringed upon by a showing of compelling state interest, 321 F. Supp. 908 at 910. The Court rejected the tenants' arguments and held,

> ". . . the ordinance rational within the meaning of the equal protection and due process clauses of the 14th Amendment." *Id.* at 912.

In discussing validity of zoning classification the court related that such,

> ". . . classifications have generally been upheld if any state of facts can be conceived which would render the legislative decision reasonable. *Dandridge v. Williams,* 397 U.S. 471, 90 S. Ct. 1253, 25 L. Ed. 2d 491 (1970)." *Id.* at 911.

It is true as asserted by Appellant that the Court in the *Palo Alto* case suggested that a law which barred traditional families from single family dwelling districts might be suspect, *Id.* at 911. However, this is merely dicta and the court in this passage did not define "traditional family". Further, at page 912 of its opinion, the court stated that the average size of the traditional family is *less than* four people.

In summary, the *Palo Alto* and *Belle Terre* cases are analogous to the present case, since all three deal with the constitutionality of ordinances defining "family" for zoning purposes. The rejection of the free association, right of privacy and family privacy, fundamental interest, and the disparity in classification should also be applicable in the present case.

The Supreme Court of Ohio recognized the constitutional validity of the East Cleveland zoning ordinance by the dismissal of Appellant's appeal. Its decision should be sustained.

II. THE DECISION OF THE OHIO SUPREME COURT REAFFIRMS THE CONSTITUTIONAL VALIDITY, WITH RESPECT TO DUE PROCESS, OF THE EAST CLEVELAND ZONING ORDINANCES, ENACTED UNDER ITS POLICE POWER IN THE INTERESTS OF THE HEALTH, SAFETY, MORALS AND WELFARE OF THE COMMUNITY, IN PROVIDING THAT "A FAMILY MAY CONSIST OF ONE INDIVIDUAL".

In the case of *City of East Cleveland v. Seaborn Hilson,* East Cleveland Municipal Court, Case No. 101,060, the defendant Hilson was found guilty of violating Section 1351.02, Ordinance 6010, as interpreted by Section 1341.08, Ordinance 6010, of the City of East Cleveland. The defendant appealed on the grounds that Section 1341.08 was unconstitutional due to vagueness and violation of the due process clause of the Fourteenth Amendment, as well as on the grounds that the judgment was not supported by the weight of the evidence. Although the Court of Appeals, Eighth District, Cuyahoga County, reversed, holding that the judgment was not supported by the weight of the evidence, the Court also held that Section 1341.08 was

not unconstitutionally vague, and was not in violation of the Fourteenth Amendment. *Hilson v. City of East Cleveland,* Case No. 30544 (App. 1971). See Journal Entry in Book 40, pages 609, 610, journalized October 12, 1971, and corrected Journal Entry, Book 41, page 345, journalized October 17, 1971.

Even though there was no opinion written by the Court of Appeals in the *Hilson* case, the upholding of the constitutionality of Section 1341.08 in that case should be determinative in the present case. The applicability of the *Hilson* ruling to the present case should not be diminished by the fact that the Appellant here is relying more heavily upon an equal protection argument than due process of law. The test for the validity of a zoning enactment should still be the same—whether or not the ordinance is reasonable, not arbitrary, and related to the public health, safety and welfare. This is surely the test used by the Court of Appeals in the *Hilson* case in upholding the constitutional validity of Section 1341.08 of Codified Ordinances of the City of East Cleveland.

Section 1341.08 does not attempt to restrict the traditional family of parents and their minor children; rather it goes further than this allowing other blood relatives. To allow a municipality to enact and enforce an ordinance such as Section 1351.02 for single family dwelling zoning, which section appellant does not contest, and then to deny the municipality the right to enforce such ordinance by defining the word family as used in Section 1341.08, would be denying the effectiveness of single family dwelling zoning.

The rationale for Sections 1351.02 and 1341.08 of Codified Ordinance 6010 is readily apparent from the Charter of the City of East Cleveland and Section 1343.02, Ordinance 6010. Section 1 of the Charter of East Cleveland provides in part:

> "The inhabitants of the City of East Cleveland as its limits now are or may hereafter be, shall be a body politic incorporate by name of the City of East Cleveland, and as such shall have perpetual succession; . . . may define, prohibit, abate, suppress, and prevent all things detrimental to the health, morals, comfort, safety and convenience and welfare of the inhabitants of the City and all nuisances and carrier thereof; *may regulate* the construction, height, and the material used in all *buildings* and the maintenance and *occupancy* thereof; . . . and may pass such *ordinances* as *may be expedient for maintaining and promoting* the peace, good government and *welfare of the City,* and for the performance of the functions thereof . . ." (Emphasis added)

Section 1343.02, Ordinance 6010, of the City of East Cleveland sets the purpose of the Housing Code which includes Sections 1351.02 and 1341.08:

> "1343.02 PURPOSE.
>
> Within the scope of this Housing Code as hereinafter defined, the purpose of this Housing Code is: to establish minimum standards necessary to make all dwelling structures safe, sanitary, free from fire and health hazards, and fit for human habitation and beneficial to the public welfare; to establish minimum standards governing the maintenance of dwelling structures in such condition as will not constitute a blighting or deteriorating influence on the neighborhood and the community; to protect property values and to maintain the character and appearance of the community and neighborhoods within the community; to fix responsibilities for owners and occupants of dwelling structures with respect to sanitation, repair and maintenance; . . . ."

It is clearly apparent from the above quoted provisions of the Charter of East Cleveland and Section 1343.02, that the enactment and enforcement of Sections 1351.02 and 1341.08 are in the best interests of the community, to further the health, safety and welfare of the citizens of East Cleveland.

In addition, the limiting of the number of families in a single dwelling unit helps alleviate the congested parking and traffic problem in East Cleveland; more families generally mean more automobiles. Further, the burden on the school system of East Cleveland is apparent; if more than one family is allowed to live in a single family dwelling unit, the Board of Education will be burdened with a disproportionate number of students as compared to the revenue from real estate taxes generated to provide funds for the school system. Moreover, responsibility as to ownership is fixed for enforcement purposes. Disputes are minimized thereby promoting peace and tranquility.

It should also be noted that in the case of *Nolden v. East Cleveland City Commission,* 12 Ohio Misc. 205, 232 N.E.2d 421 (App. 1966) the Court of Common Pleas of Cuyahoga County upheld Section 1351.03, Ordinance 6010, entitled Habitable Floor Area.

As noted by the Court of Common Pleas in the *Nolden* case at page 210 of 12 Ohio Misc.:

> "There is no question but that the purposes of the housing code: fire safety, sanitation, health, crime prevention, maintenance of property, neighborhood, and community are mothers of public welfare, and are today well within the scope of the police power. In the recent case of *Reid v. Cleveland Heights,* 119 Ohio App. 67 (1963), the Cuyahoga County Court of Appeals held that the desire to maintain a 'high character of community development' is in the public interest and contributes to the general welfare."

It is obvious that the rationale of the above statement applies equally to Section 1341.08 since both 1341.08 and 1351.03 are directed to the same purpose as stated in Section 1343.02 and the Charter of East Cleveland.

Even though persons residing in a single family dwelling may not violate the person per square feet requirement of 1351.03, a situation such as the present one could arise where more than one family is inhabiting a single family dwelling. Therefore, Section 1341.08 is needed to prevent such multiple family habitation in a single family dwelling, to prevent overcrowding, traffic and parking congestion, an undue burden on East Cleveland's school system; the diminution of the property value and character of the neighborhood; and to fix responsibilities for enforcement purposes; all of which are proper exercises of the police power for the public welfare of the community.

Finally, a single family dwelling zoning which has been long recognized as constitutional, would be meaningless if the municipality could not effectively enforce it by measures such as Section 1341.08, Ordinance 6010, of the City of East Cleveland.

The courts have consistently held that the strong presumption of validity applicable to legislative acts in general also applies to zoning ordinances. *State ex rel. River Grove Park Inc. v. City of Kettering, et al.,* 118 Ohio App. 143, 149, 193 N.E.2d 547 (App. Montgomery County, 1962), citing *Curtiss v. City of Cleveland,* 170 Ohio St. 127 (1959). Also see *Cleveland Trust Co. v. Village of Brooklyn,* 92 Ohio App. 351, 359, 110 N.E.2d 440 (App. Cuyahoga County, 1952).

The test of whether a zoning regulation is valid and constitutional is whether it is reasonable and not arbitrary, and has a substantial relation to the public health, safety

and welfare. *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395, 47 S. Ct. 114 (1926). Also see *Nectaw v. City of Cambridge*, 277 U.S. 183, 48 S. Ct. 447 (1928). As stated by the Court of Appeals for Cuyahoga County in the case of *Pure Oil Division v. Brook Park*, 26 Ohio App. 2d 153, 154-155, 269 N.E.2d 853 (1971):

> "The underlying principle in determining the validity of all zoning enactments is whether or not that ordinance passed under the state's police power is related to the safety, health, and welfare of the community." See *Euclid v. Amber Realty Co.* (1926), 272 U.S. 365.

The courts have not been restrictive in determining what is proper for public welfare in the contest of zoning enactments. Justice Douglas, in writing the majority opinion for the United States Supreme Court in the case of *Belle Terre v. Boraas*, ... U.S. ....., 94 S. Ct. 1536, 1539 (1974) citing the case of *Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, stated that the court in that case refused to limit the concept of public welfare which can be enhanced by zoning regulations:

> "The concept of public welfare is broad and inclusive . . . The values it represents are spiritual as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled."

(Quoting from the *Berman* case at pp. 32-33 of 348 U.S.). The same principle has been recognized in the Common Pleas Court of Cuyahoga County in the case of *Nolden v. East Cleveland City Commission*, 12 Ohio Misc. 205, 210, 232 N.E.2d 421 (App. 1966). By reason of the above authorities it is clearly apparent that what is for the

public welfare has been broadly interpreted by the courts in determining the validity of zoning enactments.

Even if the validity of the classification by the legislature for the purpose of zoning is fairly debatable, the judgment of the legislature will prevail. *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388, 47 S. Ct. 114 (1926). Also see *Cleveland Trust Co. v. Village of Brooklyn*, 92 Ohio App. 351.

It is also well established that a court will not substitute its judgment as to the wisdom of a zoning enactment for that of the legislature. *Cleveland Trust Co. v. Village of Brooklyn*, 92 Ohio App. 351, 359, 110 N.E.2d 440 (1952), *Pritz v. Messer*, 112 Ohio St. 628, 638-639, 149 N.E. 30 (1925).

The burden of proving that a zoning enactment is unreasonable and arbitrary, and therefore invalid, is upon the party challenging it. *Pearce v. Youngstown*, 100 Ohio App. 22, 25, 135 N.E.2d 430 (1954). The evidence that a zoning regulation is unreasonable must be clear and satisfactory. *Peebles v. State*, 25 Ohio L. Abs. 545, 546 (App. 1937), *dismissed for want of debate q.* 133 Ohio St. 130 (1937).

The Court of Appeals of Ohio, Eighth District, in affirming the decision of the trial court in the instant case, noted that the Constitution of the State of Ohio, Section 3, Article XVIII states:

> "municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

Further the Court of Appeals, in the instant case held that:

> "Two reasons for enacting and enforcing Sec. 1341.08 are mentioned by counsel for East Cleveland in his brief: 1) to help alleviate traffic congestion, and 2) to lessen the possible financial burden on the city school system which would result from an inordinate number of school age children residing in a single dwelling which would consequently generate a disproportionately small real estate tax revenue per child.
>
> The defendant failed to present the trial court with any evidence to support her contention that Sec. 1341.08 is violative of the equal protection and due process clauses. Rather she rests on the assertion in her appellate brief, that the ordinance is unreasonable and arbitrary on its face. We disagree.
>
> A municipal ordinance enacted pursuant to the legislative exercise of local police power is valid unless it clearly bears no real and substantial relation to public health, safety, morals or general welfare. *Benjamin v. City of Columbus* (1957), 167 Ohio St. 103; *Curtiss v. Cleveland* (1959), 170 Ohio St. 127.
>
> As this court recently stated in syllabus 3 of *Alsenas v. City of Brecksville* (1972), 29 Ohio App. 2d 255:
>
> 'To prevail in such a case the complainant must also clearly establish that the ordinances he attacks do not bear a real and substantial relation to the public health, safety, morals or general welfare and are, in turn, unreasonable or arbitrary, that is, in substance, that the local legislative authority could not have reasonably believed or, in permitting such

> legislation to remain in force, cannot reasonably believe that the necessity of regulation in the public interest outweighs, qualitatively, the impact imposed on the individual property owner.'
>
> A duly enacted municipal ordinance is presumed to be constitutionally valid. The burden of establishing the unconstitutionality of such ordinance is upon the one challenging its validity. *Cleveland v. Antonio* (1955), 100 Ohio App. 334.
>
> Since the defendant presents no evidence to rebut the presumption of legislative validity, we find that Sec. 1341.08 bears a real and substantial relation to public health, safety or welfare and is, therefore valid. See *City of East Cleveland v. Palmer* (1974), 40 Ohio App. 2d 10."

Zoning enactments are presumed to be valid and appellant has failed to prove that Section 1351.02 as interpreted by Section 1341.08, is unreasonable, arbitrary or not related to the public health, safety and welfare. The wisdom of the legislature in providing for the health, safety and welfare of the community should not be usurped by the judgment of a Court. Finally, what is within the public welfare for zoning purposes has been widely interpreted by the Courts, and in the present case clearly includes Section 1341.08 of the Ordinances of the City of East Cleveland.

III. THE DECISION OF THE SUPREME COURT OF OHIO CORRECTLY UPHOLDS THE CONSTITUTIONALITY OF THE EAST CLEVELAND ZONING ORDINANCES WHICH STATE "A FAMILY MAY CONSIST OF ONE INDIVIDUAL", THAT FURTHER PROVIDES ESCAPE CLAUSES TO REMEDY ANY UNDUE AND UNNECESSARY HARDSHIP AND WHERE THE APPELLANT FAILS OR REFUSES TO SEEK RELIEF FROM ANY ALLEGED HARDSHIP THROUGH PROVISIONS EMBODIED IN SUCH ZONING ORDINANCES.

It has been contended that East Cleveland zoning ordinances should fail because the state (city) has shown no compelling state (city) interest. Surely, Appellant does not remotely suggest that the City of East Cleveland has no compelling interest in seeing that the sewer system, the water supply, city services (garbage collection, fire, police, and general maintenance and upkeep) are not unduly overburdened by demands which far exceed the resources.[1] It goes without saying that an excessive demand on the water and sewer system, through overcrowding, creates fire and health hazards. An understaffed police department presents numerous safety problems. Inadequate funds jeopardize the City's very existence.

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1. Counsel for Appellee who was a resident of the City of East Cleveland from August 1964 until December, 1974 and has been employed, part-time, in the City's Law Department from September, 1973 to the present has intimate knowledge of the City. East Cleveland has a three (3) square mile radius with a population of approximately 40,000 people, many of them youths. Off-street parking is grossly inadequate. Except for a General Electric Plant, there is no major industry located in the City. East Cleveland, too, has experienced a decline in its tax duplicate.

Survival, health and safety are so obviously compelling state (city) interests that they would appear to be unrebuttable.

Appellant concedes that the city may pass ordinance § 1351.02 (Appellant's brief, p. 46). Instead, the essence of the query in her opinion is ordinance § 1341.08 (Appellant's brief, p. 46). However, Appellant fails or refuses to read the pertinent ordinances in total context which provided relief through various escape clauses. Appellant was cited for two families living where one family is suppose to live. Yet, Appellant admits two of her sons and their respective sons (her grandsons) were living with her (A. 7). However, records from the East Cleveland Housing Department show that *John Moore, Sr. did not reside in the home when the citation was issued,* instead, he lived in Cleveland on Central Avenue (Appellee's Appendix p. 29 (Emphasis added)).

In reading only ordinance § 1341.08, it would appear that Appellant should have been cited for having three (3) families living in a single dwelling. This was not an oversight (A. 4). Dale Moore, Sr. is not married and had his son Dale Moore, Jr. with him which indicates that ordinance § 1341.08 (b) excludes him. Ordinance 1313.01 (R) (2) allows Dale, Sr. and Dale, Jr. to live with Appellant as unlicensed roomers (Appellee's Appendix p. 24). There was no evidence presented below showing that neither Dale Moore, Sr. nor John Moore, Sr. is a dependent child. Thus, the choice was actually the Appellant's; she could decide which son and grandson would live with her as unlicensed roomers and let the other able bodied son find a separate residence.

Appellant had a second remedy, Appellant could have obtained guardianship for John Moore, Jr. With able counsel to represent her in the suit against the East Cleveland Board of Education and Appellee, guardianship would have

been a simple and wise choice, particularly since John Moore, Sr. was not living on the premises at that time.

The legislators who enacted Chapter XIII and the accompaning ordinances, had the foresight to provide another escape clause to remedy hardships. The illegal occupancy citation was discussed, reviewed, inspected and reinspected over a considerable period of time before the complaint was filed in the East Cleveland Municipal Court (Appellee's Appendix pp. 25-30). If the enforcement of the ordinance caused the hardship lamented about in the first thirty-two (32) pages of Appellant's brief, an appeal on the basis of hardship could have been made to the Board of Zoning Appeal and if need be to the City Commissioners (Appellee's Appendix pp. 22-23). Relief, possibly with some stipulation(s) would probably have been granted.[2]

It is clear from the record below that Appellant neither appealed the deputy housing inspector's citation to the Board of Zoning Appeal nor did she lodge an appeal with the City Commission. Where the legislature has established a procedure for appealing adverse decisions, that administrative procedure must be exhausted before one can seek a court remedy. Thus, Appellant's failure to exhaust her administrative remedy, by failing to file a timely appeal, precludes this appeal because she lacks standing to make it.

Appellant urges that the ordinance discriminates against her and denies her the fundamental rights of freedom of association and the right to privacy. First, none of the cases cited by Appellant gives grandmothers any fundamental rights with respect to grandsons. Instead, they in-

2. Counsel for Appellee served as legal advisor to the Board of Zoning Appeal for the City of East Cleveland from September, 1973 until August, 1974, and even now on occasion provides legal opinions.

volve fundamental rights between or among parents and husband and wife. Since, John Moore, Sr. the father and natural guardian of John Moore, Jr. has not relinquished custody of his son, Appellant does not stand in loco parentis to John Moore, Jr. Should John Moore, Jr. require emergency medical treatment from some occurrence at school, can Appellant give the prerequisite consent?

Appellant contends that the definition of family cuts arbitrarily and enumerates six hypothetical situations to highlight her contention. Those examples are untenable when analyzed against the entire Zoning Chapter of the City of East Cleveland. All situations listed are permissible under the proper procedure as either an unlicensed roomer, hardship cases, or guardianship.

CONCLUSION

For all the foregoing reasons, the Appellee urges this Court to affirm the decision below and to hold the challenged ordinance to be a constitutionally valid exercise of a Municipality's Police Power.

Respectfully submitted,

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APPENDIX

Charter of the City of East Cleveland

The pertinent part of the Charter of the City of East Cleveland is as follows:

CORPORATE POWERS, RIGHTS AND PRIVILEGES

SECTION 1. NAME AND POWERS.

The inhabitants of the City of East Cleveland, as its limits now are, or may hereafter be, shall be a body politic and corporate and by name The City of East Cleveland, and as such shall have perpetual succession; may use a corporate seal; may sue and be sued; may acquire property in fee simple or lesser interests or estate by purchase, gift, devise, appropriation, lease, or lease with the privilege to purchase for any municipal purpose; may sell, lease, hold, manage, and control such property, and make any and all rules and regulations by ordinance or resolution which may be required to carry out fully all the provisions of any conveyance, deed, or will, in relation to any gift or bequest or the provisions of any lease by which it may acquire property; may acquire, construct, own, lease and operate and regulate public utilities; may assess, levy and collect taxes for general and special purposes on all the subjects or objects which the City may lawfully tax; may borrow money on the faith and credit of the City by the issue or sale of bonds or notes of the City; may appropriate the money of the City for all lawful purposes; may create, provide for, construct, regulate and maintain all things of the nature of public works and improvements; may levy and collect assessments for local improvements; may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City,

and all nuisances and causes thereof; may regulate the construction, height, and the material used in all buildings, and the maintenance and occupancy thereof; may regulate the construction, location, size, height, and the materials used in all billboards, and the maintenance and use of the same; may regulate and control the use, for whatever purposes, of the streets and other public places; may create, establish, organize and abolish offices and fix the salaries and compensations of all officers and employees; may make and enforce local police, sanitary and other regulations; and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof. The City shall have all powers that now are, or hereafter may be granted to municipalities by the Constitution or laws of Ohio; and all such powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed by this Charter, or when not prescribed herein, in such manner as shall be provided by ordinance or resolution of the Commission.

Ordinances of the City of East Cleveland

Relevant East Cleveland Codified Ordinances are as follows:

CHAPTER 1311

Board of Building Code Appeals

1311.01 BOARD ESTABLISHED; COMPOSITION; NOTICE OF HEARINGS.

A Board of Building Code Appeals is hereby established, which shall consist of the City Manager, who shall act as the Chairman, the Director of Law, the Director of Health, the Chief of the Police Department and the Chief of the Fire Department, all of whom shall serve

until their successors are appointed and qualified. The City Engineer shall act as Secretary. All meetings of the Board of Building Code Appeals shall be public. Public notice shall be given of hearings on any appeal from a decision of any city official by the posting of a notice on the bulletin board in the main entrance of the City Hall for a period of at least three days, together with such additional notice, if any, that the Board of Building Code Appeals shall deem necessary. The Board of Building Code Appeals shall keep minutes of its proceedings. (Ord. 5636. Passed 6-1-65.)

1311.02 VARIANCES; RULES AND REGULATIONS.

The Board of Building Code Appeals shall determine all matters properly presented to it and where practical difficulties and unnecessary hardships shall result from the strict compliance with or the enforcement of the provisions of any ordinance for which it is designated as the Board of Appeals, such Board shall have the power to grant variances in harmony with the general intent of such ordinance and to secure the general welfare and substantial justice in the promotion of the public health, comfort, convenience, morals, safety and general welfare of the City. The Board shall also have the power to adopt from time to time such rules and regulations as it may deem necessary to carry into effect the provisions of any ordinance for which it is designated as the Board of Appeals. (Ord. 5636. Passed 6-1-65.)

1311.03 APPEAL PROCEDURE.

(a) Any person adversely affected by a decision of any City official made in the enforcement of any ordinance for which the Board of Building Code Appeals is designated as the Board of Appeals shall have the right to appeal to the Board of Building Code Appeals from such decision within ten days from the date notice of such decision

was given or mailed to him and to appear before the Board at a time and place fixed by the Board. Such appeal must be in writing. Failure to file a written appeal with the Board within the time prescribed shall constitute a waiver of the right of appeal. The Board shall have the power to approve, amend, modify or reverse any decision of such City official.

CHAPTER 1313

Rooming Houses, Hotels and Foster Homes

1313.01 DEFINITIONS.

* * * * *

(r) "Rooming house" means any building or part of any building, other than a hotel, occupied in such a manner that certain rooms are leased or rented to a roomer or roomers, as herein defined, by an owner or tenant under the following conditions:

1343.04 COMPLIANCE.

The owner, as defined in Section 1341.14, shall be responsible for compliance with all of the provisions of this Housing Code except where the responsibility therefor is specifically placed elsewhere. (Ord. 5432. Passed 11-20-62.)

1343.05 VALIDITY.

Sections and subsections of this Housing Code and the several parts and provisions thereof are hereby declared to be independent sections, subsections, parts and provisions, and the holding of any such section, subsection, part or provision thereof to be unconstitutional, void or ineffective for any cause shall not affect nor render invalid any other such section, subsection, part or provision thereof. (Ord. 5320. Passed 3-21-61.)

672-17-64

BUILDING CODE VIOLATIONS
PARCEL OWNERSHIP CHECK LIST

		Date	Owner's Name and Address
1.	City Plat Book	1-30-74	Inez Moore
2.	City Water Bill	1-30-74	Inez Moore
3.	Confirmation with Indicated Owner	1-30-74	Inez Moore
4.	County Auditors Records	1-30-74	Inez Moore

1/13/74 Inspection made by Raiford Williams. Property was found to have illegal occupancy in both suites and some structural violations.

1/16/73 Notice of violations sent to owner by R. Williams.

10/19/73 Reinspection of the property by R. Williams disclosed illegal occupancy not corrected. A request for Prosecutor's Hearing ordered.

11/8/73 Owner appeared in Prosecutor's office - was given 15 days to correct occupancy.

12/5/73 Reinspection of property by R. Williams disclosed illegal occupancy corrected on one side of dwelling - but has overflowed to other suite.

1/30/74 Reinspection of property by R. Williams and Ernest Williams disclosed only one illegal occupant. John Moore, Jr. (age 7) remains in violation of the East Cleveland Housing Code.
Case prepared for court.

Raiford G. Williams/g
Deputy Housing Inspector

Date: 1/30/74

Re: 1854-56 Garfield

A re-inspection of this property regarding a Notice of Violation dated 1/16/73, shows that violations 2-3-6 are corrected, and _____ partially corrected.

Violations 1-4-5 were not corrected.

Violations _____ given extra time to comply.

Remarks: Reinspection with Inspector E. Williams disclosed that John Moore is still living with his grandmother, illegally, and still in Violation of East Cleve. Housing Code.

Case has been prepared for Court

Signed: Raiford G. Williams/v
Deputy Housing Inspector

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Date: 12/5/73

Re: 1854-56 Garfield

A re-inspection of this property regarding a Notice of Violation dated 1/16/73, shows that violations 2-3 are corrected and _____ partially corrected.

Violations 1-4-5-6 were not corrected.

Violations _____ given extra time to comply.

Remarks: Illegal occupancy still not corrected; Mrs. Carol Moore stated she was trying to find a place to move but has been unsuccessful so far.

Will prepare this for Court case.

Signed: Raiford Williams/v
Deputy Housing Inspector

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PROSECUTORS'S OFFICE

Date: November 8, 1973

Re: 1854-56 Garfield Avenue

A re-inspection of this property regarding a Notice of Violation dated 1/16/73, shows that violations 2 & 3 are corrected, and 6 partially corrected.

Violations 1 - 4 - 5 & 6 are not corrected.

Violations _____ given extra time to comply.

Remarks: Owner appeared in Prosecutor's Office as requested has been given 15 days to correct occupancy.

Return tissue in 15 days.

Signed: Raiford G. Williams/g
Deputy Housing Inspector

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PROSECUTOR HEARING REQUEST:
COMPLAINANT: NAME R. Williams
ADDRESS _____ TELEPHONE _____
ACCUSED: NAME Inez Moore
ADDRESS 1854 Garfield TELEPHONE _____
COMPLAINT: (brief) O. K. Failure To Comply
DATE AND TIME SET: Marshall L Howard Thurs. Nov. 8, 1973 at 8:15
OCT 22 1973

PROSECUTOR HEARING REQUEST:
COMPLAINANT: NAME R. Williams
ADDRESS _____ TELEPHONE _____
ACCUSED: NAME Daniel Moore
ADDRESS 1854 GARFIELD TELEPHONE _____
RE-SAME
COMPLAINT: Failure To Comply
O.K.
DATE AND TIME SET: OCT 23 1973 Thurs. Nov. 8, 1973 at 9:15

BEST COPY AVAILABLE

CITY OF EAST CLEVELAND
CITY HALL

January 16, 1973
Date

NOTICE OF VIOLATIONS OF ORDINANCES

Location 1834-36 Garfield

Owner of Title Ines and Daniel Moore Land Contract

Owner's Address 1834 Garfield Phone 761 2230

(Circle) OPERATOR-LESSEE-RESIDENT AGENT-CORPORATION

Address Phone

Type of Building 2½ story frame duplex dwelling

Authorized Occupancy Use 2 family

Present Occupancy 4 families
Illegal occupancy - in both suites

An inspection of the above addressed premises on 1/13/73 disclosed violation of the East Cleveland Ordinances. To comply with the minimum code requirements the following violations must be corrected:

	SECTION VIOLATED	
1.	1351.02	The occupancy of a dwelling unit shall be limited to one, and only one family. Ms. Carole Moore and her son, Derik, age 8, are illegal occupants in suite 1836. . John Moore, Jr, (7) is an illegal occupant of suite 1834. Correct within 15 days.
2.	1351.11D	Repair leaking kitchen sinks in both suites. Repair laundry tub and bath tub in suite 1834. A permit is necessary. 15 days
3.	1351.17	Repair defective kitchen ceiling light and switch in 1834 suite. This is a hazardous condition. Correct within 15 days.
4.	1351.22B1	Repair defective window. Repair broken window pane to basement.
5.	1351.22B1	Repair defective door. Provide doorknob to rear door of kitchen of 1834 suite.
6.	1351.23	Repair interior walls. Plaster livingroom walls of suite 1834

Permitted Occupancy: 775 sq.ft. habitable floor area (each side)
One (1) family of 7 persons permitted (each side).

(BCH)

An inspection of this building will be made approximately the time given to correct the violations listed above. If no progress has been made at that time, this matter will be referred to the Law Department for legal action.
NOTE: Above violations must be corrected within 30 days (unless otherwise specified)
Office hours between 8 to 9 A.M. and 4 to 5 P.M. (PHONE: 681-5020)

Direct inquiries to Raiford G. Williams
Deputy Housing Inspector

Raiford G. Williams/jj